

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

## PCT

### WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing  
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference  
see form PCT/ISA/220

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No.  
PCT/L2006/001295

International filing date (day/month/year)  
12.11.2006

Priority date (day/month/year)  
10.11.2005

International Patent Classification (IPC) or both national classification and IPC  
INV. C12N5/06

Applicant  
CARTICURE LTD.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

#### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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Date of completion of  
this opinion

see form  
PCT/ISA/210

Authorized Officer

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**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/L2006/001295

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**Box No. I Basis of the opinion**

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1. With regard to the **language**, this opinion has been established on the basis of:
  - ☒ the international application in the language in which it was filed
  - ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material:
    - ☒ a sequence listing
    - ☐ table(s) related to the sequence listing
  - b. format of material:
    - ☒ on paper
    - ☒ in electronic form
  - c. time of filing/furnishing:
    - ☒ contained in the international application as filed.
    - ☒ filed together with the international application in electronic form.
    - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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**Box No. II Priority**

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1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE  
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International application No.  
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**Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

☐ the entire international application

☒ claims Nos. 14-60 (all partially)

because:

☒ the said international application, or the said claims Nos. 14-60 (all with respect to industrial applicability) relate to the following subject matter which does not require an international search (*specify*):

see separate sheet

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed (*specify*):

☐ no international search report has been established for the whole application or for said claims Nos.

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.

☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13ter.1(a) or (b).

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-bis of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details

**WRITTEN OPINION OF THE  
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International application No.  
PCT/L2006/001295

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**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	<u>2-13,15-38,42-60</u>
	No: Claims	<u>1,14,39,40,41,61</u>
Inventive step (IS)	Yes: Claims	
	No: Claims	<u>1-61</u>
Industrial applicability (IA)	Yes: Claims	<u>1-13,61</u>
	No: Claims	

2. Citations and explanations

see separate sheet

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

The present application describes the repair of cartilage tissue by allo- or xenotransplantation of neonatal mandibular condyle-derived chondrocytes.

The following documents (D) are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: US2004175826

D2: US6645764

**Re Item III**

**Non-establishment of opinion with regard to novelty, inventive step and industrial applicability**

Claims 14-60 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

- 1 The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claims 1,14,39,40,41,61 is not new in the sense of Article 33(2) PCT.

The document D1 discloses (the references in parentheses applying to this document): repair of cartilage tissue with neonatal mandibular condyle-derived chondrocytes (the whole document, e.g. claims 80, 100) which positively stain for type II collagen (FIG. 3f).

- 2 Dependent claims 2-13,15-38,42-60 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step (Art. 33(3) PCT) since their subject-matter was

either disclosed in the prior art (D1) or would be an obvious option for the person skilled in the art based on either D1 alone or in combination with D2 which discloses the use of perinatal chondrocytes for orthopedic therapy (the whole document).

- 3 The subject-matter of claims 1-13,61 is susceptible of industrial application (Article 33(4) PCT).
- 4 For the assessment of the present claims 14-60 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

**Re Item VIII**

**Certain observations on the international application**

- 5 It is not convincing that the present application can lead to the treatment of all 'orthopaedic disorders' (Art. 5 and 6 PCT), therefore claims 1,14,39,41,61 should have been restricted to the specific disorders mentioned in claims 33,35,37.
- 6 The use of the number "4" in claim 40 is not clear (Art. 6 PCT).
- 7 The vague and imprecise statement made in the description by page 33, paragraph 3, implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity of the claims (Art. 6 PCT) when used to interpret them. This statement should therefore have been removed.